

SOLOMON E. GRESEN [SBN: 164783]
STEVEN V. RHEUBAN [SBN: 48538]
LAW OFFICES OF RHEUBAN & GRESEN
15910 VENTURA BOULEVARD, SUITE 1610
ENCINO, CALIFORNIA 91436
TELEPHONE: (818) 815-2727
FACSIMILE: (818) 815-2737

Attorneys for Plaintiffs Omar Rodriguez, Steve Karagiosian,
Cindy Guillen-Gomez, Elfego Rodriguez and Jamal Childs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY GUILLEN- GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS,	)	CASE NO.: BC 414 602
	)	Assigned to: Hon. Joanne B. O'Donnell, Judge
)	
Plaintiffs,	)	PLAINTIFF'S OPPOSITION TO MOTION
	)	TO COMPEL PRODUCTION OF OMAR
-vs-	)	RODRIGUEZ'S PERSONAL LAPTOP
	)	COMPUTER
BURBANK POLICE DEPARTMENT; CITY OF BURBANK; TIM STEHR; KERRY SCHILF; JAMIE "J.J." PUGLISI; DAN YADON; KELLY FRANK; PAT LYNCH; MIKE PARRINELLO; AARON KENDRICK; DARIN RYBURN; AND DOES 1 THROUGH 100, INCLUSIVE.	)	Date: February 25, 2010
	)	Time:
	)	Location :
)	
Defendants.	)	Complaint Filed: May 28, 2009

I. INTRODUCTION

On February 2, 2010, Defendants filed their "Motion to Compel Production of Plaintiff Omar Rodriguez's Personal Laptop Computer" (the "Motion"). The motion has now been set for hearing on February 25, 2010.

Omar Rodriguez's personal laptop computer does not and never has contained any documents belonging to the Burbank Police Department ("BOD") or the City of Burbank, and defendants have no evidence to the contrary. Accordingly, defendants' Motion should be denied.

II. SUMMARY OF RELEVANT FACTS

In July 2009, counsel for plaintiffs inadvertently produced a 44-page attorney-client privileged document (the “Document”) that Plaintiff Omar Rodriguez (“Plaintiff”) had prepared for his attorneys in this case. Defendants now move to compel production of Plaintiff Omar Rodriguez’s personal laptop computer based on the following argument: (1) the Document had attached to it (although not attached to the inadvertently disclosed copy of the Document) several other documents that are allegedly confidential BPD personnel documents (the “personnel records”); (2) Omar Rodriguez performed work at home on occasion, using his personal laptop computer; and (3) therefore the personnel records attached to the Document must be, or must have been, on Plaintiff’s personal laptop computer.

The centerpiece of defendants’ motion is the assertion that Plaintiff “admitted in his deposition that he copied [the personnel records] onto a personal laptop computer which is currently in his home.” (“Motion,” p.2, lines 14-16, citing Plaintiff’s August 5, 2009, deposition at 46:7-48:6.) However this assertion misrepresents Plaintiff’s deposition testimony. Plaintiff was asked if he ever made copies “of any hard drives . . . of the Burbank Police Department for purposes of copying confidential employee records. (Rodriguez Depo, 46:7-9.) Plaintiff answered in the affirmative (Rodriguez Depo, 46:21-22) and explained he did so in order to work with the documents on a laptop in the course of his duties (Rodriguez Depo, 46:24-47:2). Plaintiff explained that he sometimes worked at home, using either a BPD laptop or his personal laptop. (Rodriguez Depo, 47:5-15.) However, Plaintiff **did not** testify that he copied the personnel records onto his personal laptop computer, as defendants claim in their motion. Rather, he testified that he put documents on a BPD zip drive that he no longer has (Rodriguez Depo, 48:12-49:3) and that he did not install it on his personal laptop computer (Rodriguez Depo, 49:4-5). Thus, defendants have not presented any evidence that Plaintiff **ever** downloaded or copied any BPD personnel records onto his personal laptop computer. For the convenience of the court, pages 46 through 49 of the Omar Rodriguez Deposition are attached as Exhibit A.

Further, if this issue requires any further clarification, the attached Declaration of Omar Rodriguez puts to rest any ambiguity concerning his former laptop and whether or not there is even a

1 remote possibility that there is any relevant evidence, or information that might lead to the discovery
2 of relevant evidence located on his laptop. Mr. Rodriguez confirms that he *never* copied work
3 related documents of any kind onto his personal laptop. In any event, the laptop suffered a gross
4 malfunction in the spring of 2009 near the time he was placed on leave of absence. He was unable to
5 retrieve any data from his old laptop and he purchased a new laptop a few months later. Since he
6 purchased the new laptop, he has not performed any work for the BPD, nor has he had access to any
7 confidential information or documents.

8 9 III. ARGUMENT

10 As fully set forth above, Defendants' moving papers grossly misrepresent Plaintiff's
11 deposition testimony in a carefully excised excerpt from the transcript. Had Defendants included the
12 following page (page 49) of the transcript, it would make clear that Plaintiff *never* downloaded any
13 confidential work records onto his personal laptop. Plaintiff's attached declaration further clarifies
14 and settles the matter. This motion fails for two reasons: (a) the data that Defendants actually seek to
15 discover is neither relevant nor likely to lead to the discovery of relevant evidence and (b) they seek
16 to discover Plaintiff's personal information that is wholly unrelated to either the Complaint or the
17 Cross-complaint.

18 19 A. **There is no showing by Defendants that any of the records sought are to be found on** 20 **Plaintiff's personal laptop.**

21 "Unless otherwise limited by order of the court . . . any party may obtain discovery regarding
22 any matter not privileged, that is relevant to the subject matter involved . . . if the matter either itself
23 is admissible in evidence or appears reasonably calculated to lead to the discovery of admissible
24 evidence." Civ. Proc. Code §2017.010. Defendants purport to seek only one type of evidence - -
25 Burbank Police Personnel Records. The information Defendants *purport* to seek is admittedly
26 relevant to their Cross-complaint and Plaintiff certainly could not assert a privilege based on third
27 parties' personnel records. However, as Defendants are well aware, the evidence they claim to seek
28 is not located on Plaintiff's laptop.

1 The only information Defendants are likely to discovery on Plaintiff's personal laptop –
2 purchased *after* he was placed on leave by the BPD – would be privileged communications between
3 Plaintiff and his counsel, personal financial records, personal social relationships and interests,
4 personal medical information and other highly personal data. Thus under the guise of seeking third
5 party personnel records, they actually seek embarrassing information that is not likely to be
6 admissible or relevant to the case, but it can be surreptitiously disclosed to the press in order to
7 embarrass Plaintiff, or to otherwise improperly pressure Plaintiff to abandon his claims.

8
9 **B. Defendants have failed to disclose their true purpose in discovering the contents of**
10 **Plaintiff's laptop.**

11 The more sensitive the information, for example personal financial information, the greater
12 the need for discovery must be shown. *Hoffman Corp. v. Superior Ct.* (1985) 172 Cal.App.3d 357,
13 362, *Tien v. Superior Ct.* (2006) 139 Cal.App.4th 528, 540. Other than confidential personnel
14 records which are not located on Plaintiff's laptop, Defendants have not only failed to identify any
15 information that they hope to find on Plaintiff's laptop, they have failed to identify any need for that
16 information. Under these circumstances, their motion should be denied in its entirety.

17 Even if Plaintiff had somehow inadvertently saved a document on his hard drive instead of
18 exclusively saving it on the BPD zip drive, such inadvertence does not support any claim of
19 intentional and improper acquisition of confidential personnel records. As Plaintiff disclosed during
20 his deposition and Defendants do not deny, they were well aware of Plaintiff's use of his laptop for
21 police work when he was working at home. However, Plaintiff took great care in ensuring that no
22 work remained on his personal laptop, but was instead returned the work to the workplace where it
23 belonged.

24
25 **C. Defendants rely upon a federal case whose facts are inapposite to the facts of this**
26 **discovery matter.**

27 Plaintiff is entitled to a protective order because his personal financial and other personal
28 information is located on his personal laptop. Rodriguez Decl., ¶15. The only similarity between the

1 Tenth Circuit federal case relied upon by Defendants and the discovery sought in this motion is the
2 fact that both involve a laptop computer. In *United States of America v. Barrows* (2007 10th Cir.)
3 481 F.3d 1246, the federal government sought discovery of the defendant's personal computer that
4 was (a) used regularly at the employer's office, (b) connected to his employer's networked common
5 computer, (c) used by others in the office, (d) installed without a password to protect his personal
6 information from access by others, (e) and left in the office, turned on and running all night on
7 numerous occasions. *Id.* at 1247-48. The court found that the defendant had no objective,
8 reasonable expectation of privacy under those circumstances.

9 The facts of that case stand in sharp contrast to the circumstances underlying this motion.
10 Indeed Plaintiff took great pains to ensure that maintained his personal and private information
11 isolated from work materials. He never downloaded any work materials onto his laptop. Instead, he
12 consistently downloaded work materials onto a BPD "zip drive." Moreover, the work was done at
13 his home and his laptop was made available only to himself. Plaintiff certainly had a reasonable
14 expectation of privacy.

15
16 **D. Should the court authorize limited discovery of data on Plaintiff's laptop, the discovery**
17 **should be conducted by an outside expert selected by both Plaintiff and Defendants.**

18 Defendants admit in their moving papers that the only documents they seek are copies of
19 BPD personnel records. There is no reason to believe that any such documents are located on his
20 laptop. However, in the unlikely event that the court wishes to grant limited access to Plaintiff's
21 laptop, that discovery should be performed by a neutral expert who is the mutual choice of all parties
22 to this action, not just Defendants' choice as they request in their moving papers and proposed order.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. CONCLUSION

Defendants' motion is improper since at the time they drafted the motion, Plaintiff had already testified in his deposition that he saved no police work on his laptop computer but instead saved it on a BPD zip drive. For all of these reasons the motion should be denied.

Dated: February 23, 2010

LAW OFFICES OF RHEUBAN & GRESEN

By: 

Steven V. Rheuban
Attorneys For Plaintiffs Omar Rodriguez, Steve Karagiosian,
Cindy Guillen-Gomez, Elfego Rodriguez and Jamal Childs

DECLARATION OF OMAR RODRIGUEZ

I, OMAR RODRIGUEZ, declare:

1. I am one of the plaintiffs in the case entitled Omar Rodriguez; Cindy Galen-Gomez; Steve Karagiosian; Elfego Rodriguez; and Jamal Childs v. Burbank Police Department, et. al., Los Angeles Superior Court Case No. BC414602. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently to the facts herein.

2. I have been a member of the Burbank Police Department ("BPD") since 1988. During my years of service in the BPD I have risen through the ranks to Lieutenant, and I have held various positions and worked on various projects, assignments and details.

3. In December 2006, I was assigned to the Administrative Division/Community Outreach and Personnel Services ("COPS"). As the Lieutenant in charge of COPS, I was responsible for the administration and overall management of Human Resources at the BPD.

4. I have been on leave from the BPD since April 15, 2009.

5. Throughout my years with the BPD, I was never aware of any rule prohibiting employees from taking work home with them and working at home, either on a BPD computer or on the employee's own computer. Many people did this, including me.

6. When I did BPD work at home on my computer, I sometimes used a BPD laptop computer and I sometimes used my personal laptop computer.

7. While I was assigned to COPS, whenever I did BPD work on a computer at my home – whether using a BPD laptop or my personal laptop – the BPD work was located on a BPD zip drive. I connected the BPD zip drive to either a BPD laptop or my personal laptop, opened the zip drive, opened the document or documents I was working on, and worked on them without moving them from the zip drive and without copying them, or any part of them, onto the BPD laptop or my personal laptop.

8. Stated another way, I never placed any BPD work and never placed any BPD documents onto my personal laptop computer.

9. The zip drive that I used when I worked at home was stolen from my office in July 2007. I reported that burglary promptly upon learning of the burglary.

1 10. Since being placed on leave on April 15, 2009, I have not worked on any BPD matters
2 and I have not had access to BPD computers.

3 11. My personal laptop computer quit working in the spring of 2009, either shortly before I
4 was placed on leave or shortly thereafter.

5 12. When my personal laptop computer quit working in the spring of 2009, I got rid of that
6 computer and replaced it with a new laptop computer, which I still own. I have never done any BPD
7 work on my current laptop computer. Nor did I transfer any BPD work or documents from my old
8 laptop computer onto my new laptop computer. In fact, as stated earlier in this declaration, I never
9 had any BPD work on my old laptop computer.

10 13. There are not now and there never have been any BPD work or documents on my current
11 laptop computer. There never was any BPD work or documents on my personal laptop computer that
12 was replaced in the spring of 2009 when it permanently malfunctioned. I was unable to retrieve *any*
13 data from my laptop.

14 14. I have never placed copies of any BPD personnel documents on my personal laptop
15 computer, nor has anyone else ever done so. In order to place BPD personnel documents on my
16 personal laptop computer, other than the reports or notes that I personally created, I would have had
17 to scan the documents, transfer them onto the BPD zip drive that I used, and then transfer them from
18 the zip drive onto my personal laptop computer. I never did that.

19 15. My personal laptop computer contains only my personal documents, including emails
20 and personal financial records. My emails include confidential emails between me and my attorneys.
21 My non-email documents include confidential documents from my attorneys and confidential
22 documents prepared by me for my attorneys.

23 16. I never used my last personal laptop computer or my current laptop computer at the BPD
24 offices, and I never gave anyone who works at BPD access to or permission to use my last personal
25 laptop computer or my current laptop computer.

26
27
28

1 17. I have always treated my personal laptop computers as personal and private, and I have
2 treated the information contained on those computers as personal and private. My personal laptop
3 computers have always been password protected in order to ensure privacy and confidentiality.
4

5 I declare under the penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.
7

8 Signed this the 22ND day of February 2010.
9

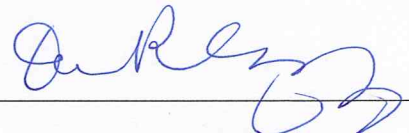
10 
11 _____
12 OMAR RODRIGUEZ
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Condensed Transcript and Word Index of the Testimony of
OMAR RODRIGUEZ, VOLUME I

Case: OMAR RODRIGUEZ vs. BURBANK POLICE DEPT.

Date: August 5, 2009

Reported By: Susan C. Campana, CSR No. 9573

Riggs Reporting Services
Certified Court Reporters
Phone: (805) 495-8919
Fax: (805) 495-6001

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY)	
GUILLEN-GOMEZ; STEVE)	
KARAGIOSIAN; ELFEGO)	
RODRIGUEZ; AND JAMAL CHILDS,)	
)	
Plaintiffs,)	
)	
vs.	)	No. BC414602
	)	VOLUME I
BURBANK POLICE DEPARTMENT;)	
CITY OF BURBANK; TIM STEHR;)	
KERRY SCHILF; JAMIE "J.J.")	
PUGLISI; DAN YADON; KELLY)	
FRANK; PAT LYNCH; MIKE)	
PARRINELLO; AARON KENDRICK;)	
DARIN RYBURN; AND DOES 1)	
THROUGH 100, INCLUSIVE,)	
)	
Defendants.)	
)	

DEPOSITION OF OMAR RODRIGUEZ, VOLUME I,
taken on behalf of the Defendants, at
150 North Third Street, Room 101,
Burbank, California, commencing at 9:41 a.m.,
on Wednesday, August 5, 2009, before
Susan C. Campana, CSR No. 9573, RPR,
pursuant to Notice.

1 confidential employee records, or other confidential
2 documents, on any hard drive or external device other
3 than in the ordinary course of performing my duties for
4 the Burbank Police Department, and then only on Burbank
5 Police Department hard drives to which I no longer have
6 access."
7 Did you ever make copies of any hard drives
8 or -- of the Burbank Police Department for purposes of
9 copying confidential employee records?
10 A. I know most of these documents here I have --
11 MR. GRESEN: Please read back the question.
12 MS. SAVITT: Well, wait.
13 I'd like him to finish his answer, please,
14 Counsel.
15 MR. GRESEN: I would like to hear the question before
16 you give him another motion to strike, nonresponsive.
17 (Record read.)
18 MR. GRESEN: Answer that question.
19 THE WITNESS: Yes.
20 Q. BY MS. SAVITT: Okay. Explain to me when.
21 A. Numerous times throughout my career I've done
22 that.
23 Q. And why?
24 A. To copy them onto hard drives. To -- for work.
25 So I can work with those documents on a laptop. In the

Page 46

1 A. At the Burbank Police Department.
2 Q. Did you utilize a laptop -- a personal laptop
3 when you were in COPS?
4 A. Yes.
5 Q. And where is that personal laptop?
6 A. At my home.
7 MS. SAVITT: Okay. I'm going to ask you, Counsel, to
8 preserve that laptop and to not delete any files on that
9 laptop because we are going to evaluate and most likely
10 go in for a motion to compel the production of it and see
11 if there are any personnel documents on that laptop.
12 Q. Did you make any disks or -- floppy disks or CDs
13 or copies of any -- of these hard drives?
14 A. Of what we're talking about here? These
15 particular ones?
16 Q. Yes.
17 A. Of those documents, only the ones that were
18 copied onto a zip drive was the internal investigation.
19 Q. Which internal investigation?
20 A. The one that I conducted on Eric Rosoff.
21 Q. Okay. So the first set of documents that we
22 looked at earlier this morning?
23 A. That's correct.
24 Q. And do you still have a copy of the zip drive?
25 Do you still have the zip drive?

Page 48

1 course of my duties. It was never for a malicious intent
2 or anything like that.
3 Q. I'm not interested in intent. I'm just
4 interested in the facts, sir.
5 Why would you make copies to work on your
6 laptop?
7 A. Working at home on a document, on an
8 investigation. Throughout my 21 years at the Burbank
9 Police Department, I've done that numerous times with --
10 sometimes with permission from my supervisor, sometimes
11 not. I've asked, "Can I work at this" -- "work with this
12 at home and on my own time just to finish it?" Sure, I
13 have.
14 Q. And is this a personal laptop or a Burbank
15 Police Department-issued laptop?
16 A. Both. I've -- I've done it on both.
17 Q. Okay. And where is the Burbank-issued laptop
18 currently?
19 A. Well, throughout the 21 years, I've had several.
20 I mean, I had one when I was in Gangs. I had one when I
21 was in Narcotics. I had another one when I was in
22 Intelligence.
23 Q. Did you have one when you were in COPS?
24 A. Yes, I did.
25 Q. Okay. Where is that laptop?

Page 47

1 A. No.
2 Q. What happened to it?
3 A. It was stolen.
4 Q. Did you install it on your personal laptop?
5 A. No.
6 Q. Is it your testimony, Lieutenant Rodriguez, that
7 you did not give these documents to your attorney?
8 That is not privileged.
9 MR. GRESEN: Is it his testimony that he didn't --
10 I'm not going to let him answer that question.
11 MS. SAVITT: Yeah. I want to know.
12 MR. GRESEN: I'm not going to let him answer it.
13 MS. SAVITT: It's not privileged if he gave it to
14 you, but it's certainly not privileged -- it's not a
15 privileged communication if it's a noncommunication.
16 Q. And I want to know, is it your testimony that
17 you did not give these documents that I've identified
18 both earlier this morning and now to your attorney?
19 MR. GRESEN: Objection. Calls for attorney/client
20 privilege.
21 I instruct him not to answer.
22 I appreciate your position. I'm not going to
23 let him answer the question.
24 MR. MICHAELS: Can I say one thing, please.
25 MS. SAVITT: Sure.

Page 49

13 (Pages 46 to 49)

1 I declare under penalty of perjury that the
2 foregoing is true and correct.
3 Executed this _____ day of _____,
4 2009, at _____, California.
5
6
7

8 _____
9 OMAR RODRIGUEZ
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles. I am over the age of eighteen and am not a
4 party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino,
California 91436.

5 On February 23, 2010, I served a copy of the following document described as
6 **PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL PRODUCTION OF OMAR**
7 **RODRIGUEZ'S PERSONAL LAPTOP COMPUTER** on the interested parties in this action as
follows:

8 Lawrence A. Michaels
9 Mitchell Silberberg & Knupp LLP
10 11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Facsimile: (310) 312-3100
Email: LAM@msk.com

Linda Miller Savitt, Esq.
Ballard Rosenberg Golper & Savitt, LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, California 91203
Facsimile: (818) 506-4827
Email: lsavitt@brgslaw.com

11 Carol Ann Humiston
12 Senior Assistant City Attorney
13 Office of the City Attorney
275 East Olive Avenue,
14 Burbank, California 91510-6459
Facsimile: (818) 238-5724
Email: chumiston@ci.burbank.ca.us

15 XX **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as
16 above, and placing each for collection and mailing on that date following ordinary
17 business practices. I am "readily familiar" with this business's practice for collecting and
18 processing correspondence for mailing. On the same day that correspondence is placed
for collection and mailing, it is deposited in the ordinary course of business with the U.S.
mail Postal Service in Los Angeles, California, in a sealed envelope with postage fully
prepaid.

19 — **BY FACSIMILE:** Based on an agreement of the parties to accept service by facsimile
20 transmission, I faxed the documents to the person(s) at the facsimile numbers listed
21 above. The telephone number of the sending facsimile machine is (818) 815-2737. The
22 sending facsimile machine issued a transmission report confirming that the transmission
was complete and without error. A copy of that report showing the time of service is
attached.

23 XX **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
24 agreement of the parties to accept service by e-mail or electronic transmission, I caused
25 the documents to be sent to the person(s) at the e-mail address listed above. My
26 electronic notification address is dj@rglawyers.com. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful. A copy of the electronic transmission showing the time
of service is attached.

27 XX **STATE:** I declare under penalty of perjury under the laws of the State of California that
28 the above is true and correct.

EXECUTED on February 23, 2010, at Encino, California.

Daphne Johnson